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Counsel for the Defendant, Fred A. Daibes

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

-----X

HONORABLE CLAIRE C. CECCHI, U.S.D.J.

NEW ENGLAND PETROLEUM LIMITED  
PARTNERSHIP, a Delaware limited  
partnership

Civil Action No. 2:14-CV-00726-CCC-JBC

,

Plaintiff,

**ANSWER TO FIRST AMENDED  
COMPLAINT AND AFFIRMATIVE  
DEFENSES OF FRED A. DAIBES**

v.

DAIBES OIL LLC, a New Jersey limited  
liability corporation; FRED A. DAIBES, an  
individual; and MUNIR DAIBES, an  
individual,

Defendants.

-----X

Defendant, Fred A. Daibes, ("FAD") an individual with offices located at 1000 Portside  
Drive, Edgewater, New Jersey by way of Answer to plaintiff's Complaint states as follows:

PARTIES, JURISDICTION AND VENUE

1. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.
2. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

3. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

4. Admitted.

5. Admitted.

6. Admitted.

7. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

8. Admitted.

9. Admitted.

### **BACKGROUND**

10. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

11. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

12. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

13. FAD admits Judy Packer is employed by an entity in which FAD has an interest. FAD lacks knowledge or information sufficient to form a belief about the truth of the remaining allegation.

14. FAD denies executing any Guarantee in favor of Plaintiff and lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

15. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

16. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

17. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

18. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

19. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

20. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

21. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

22. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

23. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

24. FAD admits receiving the letter but denies the remainder of the allegation.

25. Denied. FAD denies the existence of any obligation to Plaintiff.

26. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

27. Denied. FAD denies the existence of any obligation to Plaintiff.

**FIRST COUNT**

**(Breach of Contract Against Daibes Oil)**

28. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-27 as if set forth at length.

29. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

30. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

31. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

32. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

33. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

**SECOND COUNT**

**(Book Account Against Daibes Oil)**

34. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-33 as if set forth at length.

35. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

36. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

### **THIRD COUNT**

#### **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against Daibes Oil)**

37. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-36 as if set forth at length.

38. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

39. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

40. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

41. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

42. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

43. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

44. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

45. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

#### **FOURTH COUNT**

##### **(Unjust Enrichment Against Daibes Oil, Fred Daibes and Munir Daibes)**

46. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-45 as if set forth at length.

47. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

48. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

49. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

50. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

51. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

52. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

#### **FIFTH COUNT**

##### **(Breach of Guaranty Against Fred Daibes and Munir Daibes)**

53. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-52 as if set forth at length.

54. FAD lacks knowledge or information sufficient to form a belief about the truth of the allegation.

55. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

56. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

#### **SIXTH COUNT**

##### **(Fraud Against Daibes Oil, Fred Daibes, and Munir Daibes)**

57. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-56 as if set forth at length.

58. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

59. Deny all allegations as they relate to FAD. FAD denies the existence of any obligation to Plaintiff. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

60. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

61. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

62. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

63. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

64. Deny all allegations as they relate to FAD. FAD lacks knowledge or information sufficient to form a belief about the truth of the remainder of the allegation.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

**SEVENTH COUNT**

**(Fraud by Omission Against Fred Daibes)**



65. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-64 as if set forth at length.

66. Denied.

67. Denied.

68. Denied.

69. Denied.

70. Denied.

71. Denied.

72. Denied.

73. Denied.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

#### **EIGHTH COUNT**

##### **(Estoppel Against Fred Daibes)**

74. Defendant FAD repeats and restates each of the answers to the preceding paragraphs 1-73 as if set forth at length.

75. Denied.

76. Denied.

77. Denied.

78. Denied.

79. Denied.

80. Denied.

81. Denied.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's complaint fails to state a claim against Defendants upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's complaint is barred by failure of consideration.

**THIRD AFFIRMATIVE DEFENSE**

There is no Guaranty between Plaintiff and FAD.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff failed to act in mitigation of his damages, if any.

**SIXTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred by the Doctrine of Estoppel.

**SEVENTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred by the Doctrine of Laches.

**EIGHTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred by the Statute of Frauds.

**NINETH SEPARATE DEFENSE**

Plaintiff's Complaint is barred by the Doctrine of Unclean Hands.

**TENTH SEPARATE DEFENSE**

Plaintiff's Complaint is barred by the Doctrine of Waiver.

**ELEVENTH SEPARATE DEFENSE**

The damages, if any, sustained by the plaintiff were the result of its own actions.

WHEREFORE, Defendant FAD demands judgment dismissing Plaintiff's complaint, with prejudice, together with attorneys' fees, costs of suit and such other and further relief as the court deems just and equitable.

ROBERT P. TRAVERS, PC

By: \_\_\_\_\_

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Fred A. Daibes  
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Dated: March 12, 2014

**ROBERT P. TRAVERS, PC**

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Robert P. Travers (rt2191)

Counsel for the Defendant, Fred A. Daibes

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

NEW ENGLAND PETROLEUM LIMITED  
PARTNERSHIP, a Delaware limited  
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HONORABLE

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Plaintiff,

v.

DAIBES OIL LLC, a New Jersey limited  
liability corporation; FRED A. DAIBES, an  
individual; and MUNIR DAIBES, an  
individual,

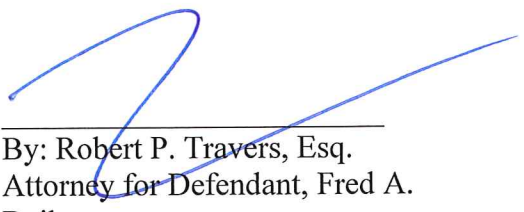
Defendants.

**CERTIFICATE OF SERVICE**

I, Robert P. Travers, Esq., hereby certify that a true copy and correct copy of Defendant, Fred A. Daibes', Answer to Amended Complaint and Affirmative Defenses has been served on all counsel of record, by UPS Overnight Mail, postage pre-paid, according to Federal Rules of Civil Procedure on the 12<sup>th</sup> day of March 2014.

Att: Joy Harmon Sperling, Esq.  
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By: Robert P. Travers, Esq.  
Attorney for Defendant, Fred A.  
Daibes